

1 **ASBESTOS REQUIREMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Larry B. Wiley**

5 Senate Sponsor: Gene Davis

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Air Quality Board's authority to require asbestos testing and
10 impose work practice, certification, and clearance air sampling requirements for
11 persons who conduct certain types of work.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ allows the Air Quality Board to impose work practice, certification, and clearance
15 air sampling requirements for persons who contract for hire for certain tasks if:

- 16 • the contract site is not a residential property with four or fewer units; or
- 17 • a tested sample from the contract site contains greater than 1% of asbestos;

18 ▶ prohibits the Air Quality Board from requiring asbestos testing on a residential
19 property with four or fewer units unless the property was constructed before January
20 1, 1981, or certain conditions are present; and

21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **19-2-104**, as last amended by Laws of Utah 2011, Chapter 174



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **19-2-104** is amended to read:

32 **19-2-104. Powers of board.**

33 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah
34 Administrative Rulemaking Act:

35 (a) regarding the control, abatement, and prevention of air pollution from all sources
36 and the establishment of the maximum quantity of air contaminants that may be emitted by any
37 air contaminant source;

38 (b) establishing air quality standards;

39 (c) requiring persons engaged in operations which result in air pollution to:

40 (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

41 (ii) file periodic reports containing information relating to the rate, period of emission,
42 and composition of the air contaminant; and

43 (iii) provide access to records relating to emissions which cause or contribute to air
44 pollution;

45 (d) (i) implementing [15 U.S.C.A. 2601 et seq. Toxic Substances Control Act,
46 Subchapter II - Asbestos Hazard Emergency Response, and reviewing and approving];

47 (A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency
48 Response, 15 U.S.C. 2601 et seq.;

49 (B) 40 C.F.R. Part 763, Asbestos; and

50 (C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants,
51 Subpart M, National Emission Standard for Asbestos; and

52 (ii) governing asbestos management plans submitted by local education agencies under
53 [that act] the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency
54 Response, 15 U.S.C. 2601 et seq.;

55 (e) establishing a requirement for a diesel emission opacity inspection and maintenance
56 program for diesel-powered motor vehicles;

57 (f) implementing an operating permit program as required by and in conformity with
58 Titles IV and V of the federal Clean Air Act Amendments of 1990;

59 (g) establishing requirements for county emissions inspection and maintenance
60 programs after obtaining agreement from the counties that would be affected by the
61 requirements;

62 (h) with the approval of the governor, implementing in air quality nonattainment areas
63 employer-based trip reduction programs applicable to businesses having more than 100
64 employees at a single location and applicable to federal, state, and local governments to the
65 extent necessary to attain and maintain ambient air quality standards consistent with the state
66 implementation plan and federal requirements under the standards set forth in Subsection (2);
67 and

68 (i) implementing lead-based paint remediation training, certification, and performance
69 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
70 Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

71 (2) When implementing Subsection (1)(h) the board shall take into consideration:

72 (a) the impact of the business on overall air quality; and

73 (b) the need of the business to use automobiles in order to carry out its business
74 purposes.

75 (3) The board may:

76 (a) (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of or
77 matter in the administration of this chapter and compel the attendance of witnesses and the
78 production of documents and other evidence, administer oaths and take testimony, and receive
79 evidence as necessary;

80 (ii) receive a proposed dispositive action from an administrative law judge as provided
81 by Section 19-1-301; and

82 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive
83 action; or

84 (B) return the proposed dispositive action to the administrative law judge for further
85 action as directed;

86 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders
87 by appropriate administrative and judicial proceedings, and institute judicial proceedings to
88 secure compliance with this chapter;

89 (c) settle or compromise any civil action initiated to compel compliance with this

90 chapter and the rules made under this chapter;

91 (d) secure necessary scientific, technical, administrative, and operational services,
92 including laboratory facilities, by contract or otherwise;

93 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,
94 and control of air pollution in this state;

95 (f) encourage voluntary cooperation by persons and affected groups to achieve the
96 purposes of this chapter;

97 (g) encourage local units of government to handle air pollution within their respective
98 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

99 (h) encourage and conduct studies, investigations, and research relating to air
100 contamination and air pollution and their causes, effects, prevention, abatement, and control;

101 (i) determine by means of field studies and sampling the degree of air contamination
102 and air pollution in all parts of the state;

103 (j) monitor the effects of the emission of air contaminants from motor vehicles on the
104 quality of the outdoor atmosphere in all parts of this state and take appropriate action with
105 respect to them;

106 (k) collect and disseminate information and conduct educational and training programs
107 relating to air contamination and air pollution;

108 (l) advise, consult, contract, and cooperate with other agencies of the state, local
109 governments, industries, other states, interstate or interlocal agencies, the federal government,
110 and with interested persons or groups;

111 (m) consult, upon request, with any person proposing to construct, install, or otherwise
112 acquire an air contaminant source in the state concerning the efficacy of any proposed control
113 device, or system for this source, or the air pollution problem which may be related to the
114 source, device, or system, but a consultation does not relieve any person from compliance with
115 this chapter, the rules adopted under it, or any other provision of law;

116 (n) accept, receive, and administer grants or other funds or gifts from public and
117 private agencies, including the federal government, for the purpose of carrying out any of the
118 functions of this chapter;

119 (o) require the owner and operator of each new source which directly emits or has the
120 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of

121 each existing source which by modification will increase emissions or have the potential of
122 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee
123 sufficient to cover the reasonable costs of:

124 (i) reviewing and acting upon the notice required under Section 19-2-108; and
125 (ii) implementing and enforcing requirements placed on the sources by any approval
126 order issued pursuant to notice, not including any court costs associated with any enforcement
127 action;

128 (p) assess and collect noncompliance penalties as required in Section 120 of the federal
129 Clean Air Act, 42 U.S.C. Sec. 7420;

130 (q) meet the requirements of federal air pollution laws;

131 (r) establish work practice, certification, and clearance air sampling requirements for
132 persons who:

133 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work
134 involving friable asbestos-containing materials, or asbestos inspections[;] if:

135 (A) the contract work is done on a site other than a residential property with four or
136 fewer units; or

137 (B) the contract work is done on a residential property with four or fewer units where a
138 tested sample contained greater than 1% of asbestos;

139 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public
140 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard
141 Emergency Response Act of 1986;

142 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,
143 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

144 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,
145 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

146 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
147 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to
148 be accredited as inspectors, management planners, abatement project designers, asbestos
149 abatement contractors and supervisors, or asbestos abatement workers;

150 (t) establish certification requirements for asbestos project monitors, which shall
151 provide for experience-based certification of persons who, prior to establishment of the

152 certification requirements, had received relevant asbestos training, as defined by rule, and had
153 acquired at least 1,000 hours of experience as project monitors;

154 (u) establish certification procedures and requirements for certification of the
155 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the
156 tax credit granted in Section 59-7-605 or 59-10-1009;

157 (v) establish a program to certify private sector air quality permitting professionals
158 (AQPP), as described in Section 19-2-109.5;

159 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
160 seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as
161 inspectors, risk assessors, supervisors, project designers, or abatement workers; and

162 (x) assist the State Board of Education in adopting school bus idling reduction
163 standards and implementing an idling reduction program in accordance with Section
164 41-6a-1308.

165 (4) Any rules adopted under this chapter shall be consistent with provisions of federal
166 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

167 (5) Nothing in this chapter authorizes the board to require installation of or payment for
168 any monitoring equipment by the owner or operator of a source if the owner or operator has
169 installed or is operating monitoring equipment that is equivalent to equipment which the board
170 would require under this section.

171 (6) (a) The board may not require testing for asbestos or related materials on a
172 residential property with four or fewer units[-], unless:

173 (i) the property's construction was completed before January 1, 1981; or

174 (ii) the testing is for:

175 (A) a sprayed acoustical ceiling;

176 (B) transite siding;

177 (C) vinyl-asbestos floor tile;

178 (D) thermal-system insulation or tape on a duct or furnace; or

179 (E) vermiculite insulated-type materials.

180 (b) A residential property with four or fewer units is subject to an abatement rule made
181 under Subsection (1) if:

182 (i) a sample from the property is tested for asbestos; and

183

(ii) the sample contains asbestos measuring greater than 1%.

Legislative Review Note
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Office of Legislative Research and General Counsel